

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.1261 of 2015
and
M.P.No.1 of 2015

1.The Chief Engineer,
Highways and Rural Works Department,
Chepauk,
Chennai-600 005.
2.The Divisional Engineer,
Highways and Rural Works Department,
Sivagangai Division. ... Appellants

Vs.

M.Ramu ... Respondent

This writ appeal is preferred under Clause 15 of Letters Patent against the order dated 10.12.2014 passed in W.P.No.16695 of 2007.

WP.NO.16695 of 2007:This Petition came to be numbered under Article 226 of the Constitution of India by way of transfer of OA.NO.3341/2003 from the file of the Tamil Nadu Administrative Tribunal within a prayer to call for the records conected with the impugned order of the 2nd respondent in his proc. No. Na.Ka.No. 442/2003 AA2 dated 18.2.2003 and qush the same and direct the 1st respondent to hold enquiry and take action to refund the amount of Rs. 75 852/- with iterest from the date of remittance into Treasury by the petitioner from out of the deposit of Rs. 89 000/- standing to the credit of the conveyance contractor.

For Appellants : Mrs.A.Srijayanthi, Spl.G.P.

For Respondent : Mr.R.Rangaramanujam

- - - - -

JUDGMENT

(The Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The writ petitioner / respondent herein filed the instant writ petition, questioning the legality of the order dated 18th February, 2003, whereunder and wherein the second appellant herein imposed a punishment of recovery of Rs.75,852/- on the writ petitioner on account of some loss, without holding proper enquiry after the writ petitioner retired on 31st October, 1998.

2 The learned Single Judge, considering all the facts, observed that the Divisional Engineer is responsible for non delivery of goods to the godown. It was further observed that the EMD of Rs.89000/- paid by the contractor has been retained in view of the pendency of the criminal case. Thus, without proper enquiry to establish the guilt and also the amount of loss, the impugned order directing the petitioner to pay back Rs.75,852/- was illegal, irregular and the same was accordingly quashed.

3 The learned counsel appearing for the appellants submits that the appellants have suffered loss on account of non delivery of one lorry load of Bitumen, for which the writ petitioner was responsible as he was the Junior Engineer at that time and in-charge of the godown.

4 On the other hand, Mr.R.Rangaramanujam, the learned counsel appearing for the respondent would contend that the enquiry alone would establish as to whether the respondent was responsible or some bitumen was not delivered to the godown at all. The guilt of an individual and also quantum of loss cannot be examined without proper enquiry and as such, the impugned order without enquiry, holding the petitioner guilty is unsustainable in the eye of law and the same was rightly quashed by the learned Single Judge.

5 We have examined all the facts of the case from all angles.

6 Indisputably, no person can be punished unheard. Even on the face of it, it was found that in the godown, some quantum of bitumen was missing, for which the petitioner being the Junior Engineer was incharge. It is not enough to hold the Junior Engineer, the petitioner, as guilty. The purpose of enquiry is two fold. Firstly, whether for the alleged loss, the person concerned is responsible and secondly, if at all he is responsible what is the extent of loss. The enquiry may also further reveal whether other persons are also responsible, may be Divisional Engineer also, who is over-all incharge.

7 Thus, in view of the foregoing, we are of the considered view that a fresh enquiry is needed in the entire episode of missing of alleged bitumen. Resultantly, we modify the order of the learned Single Judge dated 10th December, 2014, however, reserving liberty to the appellants to initiate enquiry against all concerned, if so advised, as per law and take a decision on its own merit. The respondent herein is at liberty to raise all points, as may be available to him during enquiry, if felt proper. If an enquiry is initiated, the same shall be conducted independently and completed within a period of three months from the date of receipt of a copy of this order, without being influenced by any observation made either in the impugned order rendered by the learned Single Judge or herein-above in the case on hand.

8 As a sequel, the writ appeal stands disposed of. No costs. Consequently connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vvk

To

- 1.The Chief Engineer,
Highways and Rural Works Department,
Chepauk,
Chennai-600 005.
- 2.The Divisional Engineer,
Highways and Rural Works Department,
Sivagangai Division.

+1 cc to Mr.R.Rengaramanujam Advocate sr.46650
+1 cc to Government Pleader High Court
Madras sr.46831/15

W.A.No.1261 of 2015

aa25/09/2015